



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/47
14 June 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 19 of the provisional agenda

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN,
AND TO RETURN TO HIS COUNTRY

Report of the Secretary-General prepared pursuant to
Sub-Commission resolution 1989/25

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GE.90-12306/2008B

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Introduction

1. The present document has been prepared pursuant to Sub-Commission resolution 1989/25 in which the Sub-Commission requested the Secretary-General to prepare an analytical compilation of the comments on the draft declaration received from Governments, specialized agencies, intergovernmental and non-governmental organizations and of the comments made by the members of the Sub-Commission.

2. It should be noted that the present document consists of two parts: Part I contains a summary of general observations by Governments, bodies of the United Nations system, intergovernmental and non-governmental organizations as well as by members of the Sub-Commission. Part II contains specific comments and alternative drafts or suggestions to the text prepared by the Special Rapporteur. For a full summary of all the information and comments, reference may be made to document E/CN.4/Sub.2/1989/44 and Add. 1-7 and to the respective summary records of the forty-first session of the Sub-Commission contained in E/CN.4/Sub.2/1989/SR.25, 25/Add.1 and 26. Reference should also be made to E/CN.4/Sub.2/1989/54, a working paper submitted by Mr. Diaconu. A survey of information received and of the relevant document where they had been reproduced, can be found in the annex to the present document.

I. GENERAL OBSERVATIONS ON THE DRAFT DECLARATION

3. Most of the information received as well as the comments made by members of the Sub-Commission commended the Special Rapporteur for his report and the draft declaration. It was stressed that the right to leave a country, including one's own, and to return to one's own country, was a fundamental human right. Efforts to draft international norms to develop this right, were important and would be supported.

4. The view was expressed that the right to leave and to return was an universally accepted human right, while, on the other hand, the right to enter the territory of a foreign State was not considered an international legal rule. Since the right to enter is wider in scope than the right to return, the text of the declaration as it stands now might lead to a somewhat confused interpretation regarding the two rights. Consequently, the declaration should deal with the two aspects separately. It was also stated that the declaration should focus, as its title indicated, on the right to leave and to return, and not try to develop a new right of entry.

5. One Government believed that, in drafting new human rights norms, it was essential that the development of these standards was consistent with existing human rights instruments. In the view of that Government, the draft declaration should be based on article 12 of the International Covenant on Civil and Political Rights. The same Government was concerned that the importation into the declaration of provisions concerning the rights of settled foreigners broadened the scope of the whole declaration very considerably.

6. A few Governments advised that the provisions relating to nationals of a country and to foreigners should be dealt with separately. Another Government suggested putting the provisions of procedural safeguards into a separate part.

7. The view was also expressed that migration for employment constituted a major aspect of the application of the right to leave or enter a country. Therefore, the preamble might have a reference to the relevant ILO Convention in that regard.

8. In the Sub-Commission, at its forty-second session, a few members stated that the restrictions dealt with in article 7 of the draft declaration, should be formulated in a more flexible way. It was necessary to define better the terms "national security" and "public order". The view was expressed that the draft declaration had to contain articles referring to the right to asylum, the principle of non-refoulement and the question of the treatment of stateless persons. One member held the view that the brain drain was not an appropriate subject for the Sub-Commission's consideration in that regard.

II. COMMENTS AND PROPOSALS IN RESPECT OF THE PROVISIONS
OF THE DRAFT DECLARATION

A. Title

Title as proposed by the Rapporteur

DRAFT DECLARATION ON FREEDOM AND NON-DISCRIMINATION IN RESPECT OF
THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND
TO RETURN TO HIS COUNTRY

Comments on the title

The title "Draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country" involves the problem of reconciling the free circulation of persons among States with the jurisdiction exercised by the State in its territory with regard to its nationals and the presence of aliens. [Burundi]

It is doubtful whether the term "right to return to one's own country" is comprehensive enough to cover all cases of a person's right to enter his country. While there seems to be some ambiguity, it appears that the majority speaks of a right to enter. In the view of the Government of Jamaica a right to enter one's country would be more consistent with the general trend and the elaboration should focus on this right rather than on a right to return. [Jamaica]

B. Preamble

Text prepared by the Rapporteur */

Whereas the peoples of the United Nations in the Charter solemnly reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and expressed their determination to promote social progress and better standards of life in larger freedom,

Whereas the Charter declares that it is one of the purposes of the United Nations to promote and encourage universal respect and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that respect for human rights and fundamental freedoms is essential for peace, justice and well-being and is necessary to ensure the development of friendly relations and co-operation among all States,

Recalling that the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Convention on the Elimination of All Forms of Racial Discrimination, as well

*/ The text of the draft declaration proposed by the Special Rapporteur is contained in E/CN.4/1989/44, Annex

as regional conventions, recognize the fundamental principle, based on general international law, that everyone has the right to leave any country, including one's own, and to return to one's own country,

Emphasizing that the right of everyone to leave any country and to enter one's own country is indispensable for the full enjoyment of all civil, political, economic, social and cultural rights and the free and untrammelled exercise of this right is a sure means of fostering mutual understanding, co-operation and beneficial exchanges among the peoples of the world so that they may practise tolerance and live together in peace as good neighbours,

Recognizing that an individual has duties to himself and to his family as well as to the community in which he lives and in which alone the full and free development of his personality is possible,

Concerned that the denial of this right is the cause of widespread human suffering, a source of international tensions, and an object of international concern,

Whereas this right can only be effectively guaranteed when formally acknowledged in national law consistent with the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Now therefore the following principles are hereby proclaimed as of universal application to ensure recognition and enjoyment of the right of everyone to leave any country, including his own, and to return to his country, and other related rights, and to prevent discrimination in respect of these rights and urges upon all nations the elaboration, implementation and enforcement of the following principles through effective international machinery and international laws and processes.

Comments and proposals

Paragraph 1

The phrase "and of nations large and small" (3rd and 4th lines) should be deleted [Japan];

Paragraph 4

The second part of the paragraph should read "... recognize the fundamental right to everyone to leave any country ..." [Netherlands];

Paragraph 5

(a) After "any country" (1st line) insert "including his own" [Japan];

(b) The phrase "to enter one's own" (1st and 2nd lines) to be replaced by "to return to his" [Japan];

(c) Insert "the right" between "any country and" and "to enter" [Jamaica].

Paragraph 6

Delete the paragraph [Jamaica, Japan, Netherlands, International Institute for Human Rights].

Paragraph 7

Delete the paragraph [Japan].

Paragraph 9

- (a) After "to ensure" (2nd line) insert "without discrimination" [Japan];
- (b) Delete the last four lines of the paragraph [Japan];
- (c) Reference should be made to national machinery and national laws and processes [Netherlands];
- (d) Paragraph to be deleted [United Nations High Commission for Refugees, International Committee for Migration].

C. Part I - General provisions (Articles 1-2)

Text as proposed by the Rapporteur

PART I. GENERAL PROVISIONS

Article 1

Everyone has the right to leave any country, including own's own, and to enter one's own country, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, marriage, age (except for minors not sui juris independently of their parents) or other status.

Article 2

- (a) Every State shall adopt such legislative or other measures as may be necessary to ensure the full and effective enjoyment of the rights set forth in this Declaration;
- (b) All laws, administrative regulations or other provisions affecting the enjoyment of these rights shall be published and made easily accessible;
- (c) The conditions prescribed by law or administrative regulations for the exercise of this right shall be the same for all nationals of a country;

Comments and proposals

Article 1

- (a) The verb "enter" (2nd line) be replaced by "return to" [Japan];
- (b) Delete "except for minors not sui juris independently of their parents" [Japan, Netherlands, International Institute for Human Rights];

(c) Standardize throughout the text reference to the right to enter or to return [Portugal];

(d) After "independently of their parents" insert "or not authorized by the latter" [UNESCO];

(e) Add a second paragraph, reading: "This right shall be exercised under the conditions specified below and in accordance with the national legislation of each country" [Mr. Diaconu].

Article 2

(a) Subparagraph (a) should be deleted [Japan];

(b) Add at the end of subparagraph (a) the following: "... while at the same time refraining from any action which could serve to impede the effective enjoyment of these rights ..." [UNHCR];

(c) Subparagraph (c) should be a new paragraph (a) [Japan];

(d) Modify the text of subparagraph (c) as follows: "(c) The conditions prescribed by law or administrative regulations of a country for the exercise of this right shall be the same for all its nationals" [ILO];

(e) Delete subparagraph (c) [Portugal];

(f) Add a new article 2, reading:

"In order that this right may be exercised, every State shall adopt policies and measures to enable persons from other countries to enter its territory, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth, or marital or other status.

"Every State shall also take all such legislative or other measures as may be necessary to guarantee to the persons entering its territory the enjoyment of all economic, social and cultural rights and, as appropriate, political and civil rights" [Mr. Diaconu].

D. Part II - Right to leave (Articles 3-9)

Text prepared by the Rapporteur

PART II - RIGHT TO LEAVE

Article 3

Every State shall recognize, implement and enforce the right of any person to leave its territory, temporarily or permanently.

Article 4

In the implementation of the right to leave every State shall prevent adverse economic consequences through the "brain drain" and shall make bilateral and multilateral arrangements for the benefit of the developing countries concerned.

Article 5

No person nor members of his family shall be subjected to any sanction, penalty, official or unofficial reprisals or harassments for seeking to exercise or for exercising the right to leave a country, such as acts which adversely affect, inter alia, employment, housing, residence status of social, economic or educational benefits.

Article 6

(a) No person shall be required to renounce his or her nationality in order to leave a country, nor shall a person be deprived of nationality for seeking to exercise or for exercising the right to leave a country;

(b) No person shall be denied the right to leave a country on the grounds that that person wished to renounce or has renounced his or her nationality.

Article 7

(a) No restriction may be imposed on the right to leave any country including own's own or to enter any country except those which are

- (i) Provided by law;
- (ii) Necessary to protect national security, "public order" (ordre public), public health or morals or the rights and freedoms of others;
- (iii) Consistent with internationally recognized human rights and other international legal obligations.

Any such restriction shall be narrowly construed.

(b) Any restriction on the right to leave or enter shall be clear, specific and not subject to arbitrary application;

(c) A restriction shall be considered "necessary" only if it responds to a pressing public and social need, pursues a legitimate aim and is proportionate to that aim;

(d) A restriction based on "national security" may be invoked only in situations where the exercise of the right poses a clear, imminent and serious danger to the State. When this restriction is invoked on the grounds that an individual acquired military secrets, the restriction shall be applicable only for a limited time, appropriate to the specific circumstances, which should not be more than five years after the individual acquired such secrets;

(e) A restriction based on "public order" (ordre public) shall be directly related to the specific interest which is sought to be protected. "Public order" (ordre public) means the universally accepted fundamental principles, consistent with respect for human rights, on which democratic society is based;

(f) "Public health" may be invoked when there is a serious threat to the health of the population or individual members of the population;

(g) "Public morals" may be invoked when it is essential to the maintenance of respect for fundamental moral values of the community;

(h) A restriction based on "the rights and freedoms of others" shall not imply that relatives (except for parents with respect to minors not sui juris) employers or other persons may prevent, by withholding their consent, the departure (entry) of any person seeking to leave (to enter) a country.

Article 8

(a) No fees, taxes or other exactions shall be imposed for seeking to exercise or exercising the right to leave a country, with the exception of nominal fees related to travel documents;

(b) No deposit or other security shall be required to ensure the repatriation or return of any national;

(c) Currency or other economic controls shall not be used as a means of preventing any national from leaving his country;

(d) Any national prevented from leaving his country because of non-compliance with obligations towards the State, or towards another person, shall be allowed to make reasonable arrangements for satisfying these obligations.

Article 9

(a) Any person leaving a country shall be entitled to take out of that country:

- (i) His or her personal property, including household effects and property connected with the exercise of that person's profession or skills;
- (ii) All other property or the proceeds thereof, subject only to the satisfaction of legal monetary obligations, such as maintenance obligations to family members, and to general controls imposed by law to safeguard the national economy, provided that such controls do not have the effect of denying the exercise of the right;

(b) Property or the proceeds thereof which cannot be taken out of the country shall remain in the possession of the departing owner, who shall be free to dispose of such property or proceeds within the country.

Comments and proposals

Article 3

- (a) Delete "temporarily or permanently" [Jamaica, Japan];
- (b) In the first line replace "any person" by "its nationals" [Japan];

(c) The word "enforce" be replaced by "provide for" [UNHCR];

(d) After "temporarily or permanently" insert "and shall refrain from preventing, even indirectly, nationals of other States from leaving their countries of origin" [International Federation of Human Rights];

(e) At the end of the article add: "... and shall not devise methods to prevent the exercise of this right" [International Institute for Human Rights].

Article 4

(a) Delete the article [Federal Republic of Germany, Japan, Netherlands, International Commission of Jurists, International Institute for Human Rights].

Article 5

(a) The following wording is suggested:

"No person seeking to exercise the right to leave a country nor members of his family shall be subjected, for that reason, to any sanction, penalty, official or unofficial reprisals or harassment, such as acts which adversely affect, inter alia, employment, housing, residence status or social, economic or educational benefits. No person exercising the right to leave a country shall be unduly subjected to such measures. This does not preclude that the granting of rights and benefits in the fields mentioned above may be excluded or limited as long as the beneficiary is staying outside the national territory of the country granting these rights and benefits." [Federal Republic of Germany];

(b) The phrase "residence status of social, economic or educational benefits" be replaced by "resident status or social, economic or educational benefits" [Jamaica];

(c) Reformulate the article as follows:

"No one shall be subject to any sanctions, penalty, official or unofficial reprisals or harassments for seeking to exercise or for exercising the right to leave his or her country" [Japan];

(d) Add at the end of the paragraph, the following: "... or the enjoyment of civil and political rights [UNHCR];

(e) Delete "inter alia" [International Commission of Jurists];

(f) In the first phrase insert "any" between "nor" and "members", and "or her" between "his" and "family" [International Institute for Human Rights];

(g) Amend this article to read:

"... for seeking to exercise or for exercising, in accordance with the law, the right to leave a country" [Mr. Diaconu].

Article 6

(a) Reformulate subparagraph (a) as follows: "No one shall be required to renounce his or her nationality as a condition of exercise of the right to leave his or her country, nor shall he or she be deprived of nationality as a consequence of his or her leaving the country" [Japan];

(b) Amend subparagraph (b) as follows: "No one shall be denied the right to leave any country including one's own on the grounds that that person wished to renounce or has renounced his or her nationality" [Japan];

(c) Replace in subparagraph (b) "wished" by "wishes" [International Institute for Human Rights];

(d) Amend article 6 (a) to read:

"No person shall be required to renounce his or her nationality in order to leave a country, nor shall a person be deprived of nationality, solely for seeking to exercise or for exercising the right to leave a country, subject to the law on the question of dual nationality in the country concerned". [Mr. Diaconu];

(b) Delete subparagraph (iii) [Japan];

(c) Replace subparagraph (a) (i) by the following:

"In cases where the person seeking to leave the country has been charged in the courts or by the prosecuting authorities of the country with a criminal offence punishable with imprisonment or a substantial fine;" [Regional Council on Human Rights in Asia];

(d) Replace subparagraph (a) (ii) as follows: "Necessary in a democratic society to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others; and" [International Institute for Human Rights].

Article 7 (b)

(a) Delete the subparagraph [Jamaica];

(b) Delete in the first line "or enter" [Japan];

(c) It is not clear whether this provision concerns nationals or non-nationals [UNESCO].

Article 7 (c)

(a) Should "social need" be considered as a cause for denying a passport? [Finland];

(b) Delete all subparagraphs (c) - (h) [Japan];

(c) Delete "a pressing public and social need" and "a legitimate aim" [Netherlands, UNESCO].

Article 7 (d)

(a) After the first sentences of the sub-paragraph insert:

"A restriction based on national security may be imposed on the right to leave one's own country for more than three months for persons liable to military or substitute civilian service." [Federal Republic of Germany];

(b) Replace paragraphs (d) and (h) by the following paragraph (d):

"(d) The restrictions mentioned in paragraph (a) above shall not be interpreted or applied in such a way as to prejudice the right of everyone to leave any country, including his own, or to enter any country".

"(e) Public order (ordre public) means the system of values and constitutional, political, social and legal principles that are regarded as fundamental by each society";

"(h) A restriction based on the rights and freedoms of others shall not preclude the exercise of the right of every one to leave or enter a country if the person seeking to exercise that right takes reasonable steps to ensure that the rights and freedoms of the persons concerned are not prejudiced" [Mr. Diaconu].

Article 7 (f)

(a) Add "of any State" [Netherlands];

(b) Begin the subparagraph with "A restriction based on public health may be invoked only ..." [International Institute for Human Rights].

Article 7 (g)

(a) The words "it" and "fundamental moral values" are queried [United Kingdom];

(b) The notion "public moral" is too broadly defined [UNESCO];

(c) Begin the subparagraph with: "A restriction based on public morals may be invoked only ..." [International Institute for Human Rights].

Article 7 (h)

(a) Insert "spouse" before "employers" and delete "(entry, to enter) ..." [Federal Republic of Germany, International Institute for Human Rights];

(b) There is a confusion between restrictions on the right to leave and the right to enter [United Kingdom].

Article 8 (a)

(a) The phrase "seeking to exercise or" (1st and 2nd line) should be deleted [Japan];

(b) The term "a country" (2nd line) be replaced by "the country of which he is a national" [Japan];

(c) Replace "normal" by "reasonable" or "fixed at a level which will not negate freedom to travel" [United Kingdom];

(d) Add the following phrase at the end of the text:

"... and to the relevant administrative formalities" [Mr. Diaconu].

Article 8 (b)

(a) The term "repatriation" is unclear [United Kingdom].

Article 8 (c)

(a) The term "economic controls" is unclear [Japan].

Article 8 (d)

(a) The phrase "to make reasonable arrangements for satisfying these obligations" is unclear [Japan, UNESCO];

(b) In the first phrase replace "national" by "person" [International Institute for Human Rights].

Article 9 (a)

(a) Mention should be made of personal documents that do not belong to the travel documents referred to in article 12 (birth and other certificates, diplomas and doctor's degree certificates) [Federal Republic of Germany];

(b) "person" and "a country" be replaced by "national" and "his or her country" [Japan];

(c) Sub-paragraph (i) should be amended as follows: "His or her personal property, including household effects and tools required for the exercise of that person's profession or skill, subject to the provisions of the laws and regulations concerning import and export" [Japan];

(d) Sub-paragraph (ii) should be amended as follows: "The proceeds gained by selling his or her personal property in accordance with the laws and regulations of the countries concerned" [Japan];

(e) In sub-paragraph (i) to add "or resulting from", thus replacing "connected with" [ILO];

(f) In sub-paragraph (ii), after "to safeguard the national economy" (fifth line), add "or the cultural heritage" [Mr. Diaconu].

Article 9 (b)

(a) Delete the sentence "who shall be free to dispose of such property or proceeds within the country" [Japan];

(b) Replace "possession" by "ownership" and "shall remain in" by "remain vested in" and it can be added "property which in accordance with article 9 (a) (ii) cannot be taken out of the country" [United Kingdom];

(c) Replace "in the possession of" by "vested in" (International Institute for Human Rights);

(d) Add a new subparagraph (c):

"(c) The rights and benefits to which a person is entitled under social security or insurance schemes, including rights in course of acquisition, shall be safeguarded and maintained." [ILO];

(e) At the end of the sentence, add "in accordance with the law thereof" [Mr. Diaconu].

E. Part III - The right to return (Articles 10-11)

Text as proposed by the Rapporteur

PART III - THE RIGHT TO RETURN

Article 10

(a) No one shall be deprived of the right to enter [to return to] his own country;

(b) The right of everyone to return to his country shall not be subject to any arbitrary restrictions;

(c) No person shall be deprived of nationality or citizenship in order to enforce exile or to prevent that person from exercising the right to enter his or her country;

(d) No entry visa or fees or taxes may be required to enter one's own country.

Article 11

Permanent legal residents who leave their country of residence shall not be denied the right to return to that country except for reasonable cause identical to those applicable under article 7 of this Declaration.

Comments and proposal

Article 10 (a)

(a) The words in square brackets be deleted [Jamaica, Portugal];

(b) The term "own country" needs clarification as to whether it relates to country by citizenship or country by nationality [Jamaica];

(c) "To enter" and "to return to" should both be used in subparagraphs (a) and (b) [Federal Republic of Germany];

(d) Subparagraphs (a) and (b) should be merged into one paragraph as follows:

"No one shall be arbitrarily deprived of the right to return to his or her own country" [Japan, United Kingdom];

(e) Delete "to return to" [International Institute of Human Rights];

(f) At the end of the sentence, add "except in the circumstances mentioned in article 7 above" [Mr. Diaconu].

Article 10 (b)

(a) The subparagraph should be amended as follows:

"(b) The right of everyone to return to his or her country, which must be able to be exercised in conditions of safety and dignity, shall not be subject to any arbitrary restrictions or to any recriminations on return arising solely out of the fact of departure, whether that departure was authorized or not" [UNHCR];

(b) Delete the subparagraph [International Institute of Human Rights].

Article 10 (c)

(a) Insert "his or her" between "of" and "nationality" and replace "enter" by "return to" [Japan];

(b) Insert "otherwise" between "exile or" and "to prevent" [International Institute of Human Rights];

(c) At the end of the sentence, add "subject to the provisions of national law concerning dual nationality or the forfeiture of nationality for other reasons" [Mr. Diaconu];

Article 10 (d)

(a) Replace "enter" by "return" [Japan];

(b) The term "one's country" is ambiguous [UNESCO];

(c) Replace "or" after "visa" by a comma [International Institute of Human Rights].

Article 11

(a) Delete this article [Federal Republic of Germany, Japan];

(b) Should be moved to Part IV [Finland];

(c) The term "Permanent legal residents" is ambiguous [Finland];

(d) the importation into the declaration of provisions concerning the right of settled foreigners broadens the scope of the declaration [United Kingdom];

(e) Delete all words including and following "except for reasonable cause" [UNHCR];

(f) Insert article 11 as a new paragraph between paragraphs (c) and (d) of article 12 [UNESCO];

(g) In the second phrase insert "arbitrarily" between "shall not be" and "denied" and delete "except for reasonable cause identical to those applicable under article 6 of this Declaration" [International Institute of Human Rights].

F. Part IV - The right of a foreigner to leave the country (Article 12)

Text as proposed by the Rapporteur

PART IV - THE RIGHT OF A FOREIGNER TO LEAVE THE COUNTRY

Article 12

(a) Every foreigner has the right to leave the country of his sojourn;

(b) Every foreigner, legally within the territory of a country shall not be accorded lesser rights than a national in the exercise of his right to leave that country;

(c) The right of every foreigner to leave the country of his sojourn shall not be subject to any arbitrary restrictions;

(d) No foreigner shall be prevented from seeking the diplomatic assistance of his own country in order to ensure the enjoyment of his right to leave the country of his sojourn.

Comments and proposal

Title

(a) Modify the title as follows: "the right of a foreigner to leave the country and to return to it" [UNESCO].

Article 12 (General)

(a) It is not clear why the specific provisions in relation to foreigners in subparagraphs (a), (b) and (c) are required [United Kingdom];

(b) Delete Part IV [International Institute of Human Rights].

Article 12 (a)

(a) Add at the end of the subparagraph the following clause:

"The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others." [Japan];

(b) The phrase "every foreigner has the right to leave the country of his sojourn" raises a problem of interpretation [Portugal].

Article 12 (b)

(a) Delete the subparagraph [Finland, Jamaica, Japan, International Commission of Jurists].

Article 12 (c)

(a) Delete the subparagraph [Japan, Jamaica, Portugal, United Kingdom].

Article 12 (d):

(a) Replace "diplomatic assistance" by "assistance of the diplomatic mission" [Japan];

(b) Add at the end "or return to it" [UNESCO].

G. Part V - Travel documents and procedural safeguards (Articles 13-17)

Text as proposed by the Rapporteur

PART V - TRAVEL DOCUMENTS AND PROCEDURAL SAFEGUARDS

Article 13

(a) Everyone has the right to obtain such travel or other documents as may be necessary to leave any country or to enter one's own country. No one shall be denied such documents and permits;

(b) Such documents shall be issued free of charge or subject only to nominal fees.

Article 14

(a) Any national procedures or requirements affecting the exercise of the rights set forth in this Declaration shall be established by law or administrative regulations adopted pursuant to law;

(b) No State shall refuse to issue the documents referred to in article 13 (a) or shall otherwise impede the exercise of the right to leave, on the grounds of the applicant's inability to present authorization to enter another country;

(c) Procedures for the issuance of the documents referred to in article 13 (a) shall be expeditious and shall not be unreasonably lengthy or burdensome;

(d) Everyone filing an application for any document referred to in article 13 (a) shall be entitled to obtain promptly a duly certified receipt for the application filed. Decisions regarding issuance of such documents shall be taken within a reasonable period of time specified by law. The applicant shall be promptly informed in writing of any decision denying, withdrawing, cancelling or postponing issuance of any such document; the specific reasons therefore; the facts upon which the decision is based; and the administrative or other remedies available to appeal the decision.

Article 15

The right to appeal to higher administrative or judicial authority shall be provided in all instances in which the right to leave or enter is denied. The appellant shall have a full opportunity to present the grounds for the appeal, to be represented by counsel of his or her choice, and to challenge the validity of any fact upon which a denial or restriction has been founded. The results of any appeal, specifying the reasons for the decision, shall be communicated promptly in writing to the appellant.

Article 16

Any person claiming violation of his rights set forth in this Declaration shall have effective recourse to a judicial or other independent tribunal to seek enforcement of those rights.

Article 17

(a) No State may impede communication by any person with an international organization outside the State with regard to the rights set forth in this Declaration. No sanction, penalty, reprisal or harassment may be imposed on anyone exercising this right of communication;

(b) No one shall be hindered in or penalized for communicating with or petitioning the United Nations or other intergovernmental or non-governmental organizations complaining of the denial of the rights set forth in this Declaration or seeking their assistance in the exercise of these rights;

(c) No one shall be penalized for or prevented from communicating with foreign consular or diplomatic officials with a view to obtaining travel documents or permits;

(d) A person who claims to be a national of another State shall not be prevented from seeking the assistance of that State in order to ensure his right to leave or return.

Comments and proposals

Article 13

(a) The second sentence of subparagraph (a) should be supplemented as follows: "... except in cases where restrictions may be imposed on the right to leave in accordance with this Declaration" [Federal Republic of Germany];

(b) The phrase "Everyone has the right" be replaced by "Every national of a country is entitled" [Japan];

(c) The words "or others" be deleted [Japan];

(d) Replace "any country" by "his or her country" [Japan];

(e) Delete "no one shall be denied such documents and permits" [Japan];

(f) Relationship between articles 13 (a) and 14 (b), (c) and (d) should be clarified [United Kingdom];

(g) Amend article 13 (a) as follows:

"(a) Everyone has the right to obtain such travel or other documents as may be necessary to leave any country or to enter one's own country including, as appropriate, those foreseen under international conventions or agreements. No one shall be denied such documents and permits" [UNHCR];

(h) In the second sentence, insert "arbitrarily" between "shall be" and "denied" [International Institute for Human Rights];

(i) At the end of article 13 (a) add "when exercising this right in accordance with the national law" [Mr. Diaconu].

Article 14 (a)

(a) Replace "affecting the exercise of the right set forth in this Declaration" by "regarding issuance of the travel documents" [Japan];

(b) "established" (2nd line) be replaced by "provided" [Japan].

Article 14 (b)

(a) Delete the subparagraph [Japan];

(b) Amend the text to read:

"Except in pursuance of the restrictions mentioned in article 7 above, no State shall refuse to issue the documents referred to in article 13 (a), or entry visas, to persons wishing to exercise the rights set forth in this Declaration" [Mr. Diaconu];

Article 14 (c)

(a) Delete the subparagraph [Japan];

(b) "without undue delay" may be a better wording than "expeditiously" and "not ... unreasonably lengthy" [United Kingdom].

Article 14 (d)

(a) Should a maximum time be prescribed or a provision made? [Finland];

(b) The words "any document" be replaced by "travel documents" [Japan];

(c) Delete "the facts upon which the decision is based" (7th line) [Japan].

Article 15

(a) In the first sentence insert "one's own country" after "enter" [Federal Republic of Germany];

(b) Amend the first sentence as follows: "Every national has the right to appeal to a higher administrative or juridical authority of his or her own country in all instances in which the issuance of his or her travel documents is denied". Delete the rest of the paragraph [Japan];

(c) Amend the article as follows:

"The right to appeal to higher administrative or judicial authority shall be provided in all instances in which the right to leave or enter is denied, this right must also be capable of being exercised before a higher administrative or judicial authority of a third State when the denial is the result of a decision made by a public or private agent subject to the legal order of that State and acting in the territory of the State of which the individual is a national" [International Federation of Human Rights].

Article 16

(a) Delete the article [Japan, United Kingdom];

(b) Replace "juridical or other independent tribunal" by "juridical or other authority" [Portugal];

(c) The term "juridical or other independent tribunal" raises a problem of definition [UNESCO];

(d) Replace the expression "independent tribunal" (second line) by "competent body" [Mr. Diaconu].

Article 17 (a)

(a) Reword the second sentence as follows "no one exercising this right of communication may be subject to any sanction, penalty, reprisal or harassment" [United Kingdom];

(b) Insert "or other bodies or persons" between "organizations" and "outside" (2nd line) [Japan];

(c) Replace "exercising the right of communication" by "for this communication" [Japan];

(d) The beginning of the subparagraph should be: "No one shall be prevented from communicating with ..." [Japan].

Article 17 (b)

(a) Replace "of the denial" (3rd line) by "violations which also covers denial as well as any other negligence of the right set forth in this part of the declaration" [Japan];

(b) Insert into the subparagraph "treaty bodies" [United Kingdom].

Article 17 (d)

(a) Delete the subparagraph [Japan, UNESCO];

(b) Replace "return" by "enter" [Portugal];

(c) What would be the position of dual nationals? [International Commission of Jurists];

(d) Insert at the start of the sentence "Subject to the provisions of national law on the question of dual nationality." [Mr. Diaconu].

H. Part VI - Final provisions (Articles 18-20)

Text as proposed by the Rapporteur

PART VI - FINAL PROVISIONS

Article 18

The enjoyment of the rights set forth in this Declaration shall not be limited because of activities protected under internationally recognized human rights or other international legal obligations.

Article 19

Nothing in this Declaration shall be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at destroying any of the rights set forth herein or at limiting them to a greater extent than is provided for in this Declaration.

Article 20

The present Declaration shall not be interpreted to limit the enjoyment of any human right protected by international law.

Comments and proposals

Article 18

(a) It is not clear how this article differs in effect from article 20 [United Kingdom];

(b) Delete article 18 [Mr. Diaconu].

General

Add the following new paragraph to the part:

"The conformity with the principles of this Declaration shall be subject to international scrutiny" [International Institute for Human Rights].

Annex

List of information received

Governments

Argentina	E/CN.4/Sub.2/1989/44	
Burundi	"	/Add.1
Cyprus	"	/Add.1
Finland	"	
Germany, Federal Republic of	"	/Add.4
Iraq	"	/Add.2
Israel	"	/Add.1
Jamaica	"	/Add.5
Malawi	"	
Netherlands	"	/Add.6
Portugal	"	/Add.7
Spain	"	
Syrian Arab Republic	"	/Add.1
United Kingdom of Great Britain and Northern Ireland	"	/Add.1
Uruguay	"	/Add.1
Venezuela	"	/Add.3

United Nations bodies and specialized agencies

United Nations High Commissioner for Refugees (UNHCR)	E/CN.4/Sub.2/1989/44	
International Labour Office (ILO)	"	
United Nations Educational, Scientific and Cultural Organization (UNESCO)	"	

Intergovernmental Organizations

Intergovernmental Committee for Migration Organization of American States	E/CN.4/Sub.2/1989/44	
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Non-governmental organizations

International Commission of Jurists	"	
International Confederation of Free Trade Unions	"	
International Federation of Human Rights	"	
International Institute for Human Rights (IIHR)	"	/Add.1
Inter-Parliamentary Union	"	
League for Human Rights and Freedoms	"	
Regional Council on Human Rights in Asia	"	
World Muslim Congress	"	

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**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/48
29 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 19 of the provisional agenda

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN,
AND TO RETURN TO HIS COUNTRY

Report of the Working Group on a draft declaration on
freedom and non-discrimination in respect of the right
of everyone to leave any country, including his own,
and to return to his country

Chairman-Rapporteur: Mr. Miguel Alfonso Martínez

INTRODUCTION

1. At its forty-first session the Sub-Commission on Prevention of Discrimination and Protection of Minorities, adopted resolution 1989/25 of 31 August 1989. By this resolution, the Sub-Commission decided to establish at its forty-second session a sessional open-ended working group with a view to preparing a revised version of the Draft Declaration on Freedom and Non-Discrimination in Respect of Everyone to Leave Any Country, Including His Own, and to Return to His Country.
2. This draft declaration emanates from the work of the Special Rapporteur, Mr. C.L.C. Mubanga-Chipova, who presented his final report on the question to the fortieth session of the Sub-Commission in 1988 (E/CN.4/Sub.2/1988/35 and Add.1/Corr.1).
3. In its resolution, the Sub-Commission also requested the Secretary-General to prepare an analytical compilation of the comments on the Draft Declaration received from Governments, specialized agencies, intergovernmental organizations and non-governmental organizations and of the comments made by the members of the Sub-Commission.
4. The Working Group held three meetings, on 7, 8 and 14 August 1990. The session was opened by a representative of the Centre for Human Rights who made an introductory statement mentioning the importance and complexity of the task assigned to the Group.

ELECTION OF OFFICERS

5. The Working Group consisted of the following members:
Mr. Miquel Alfonso Martínez, Mr. Ion Diaconu, Mr. Asbjørn Eide,
Ms. Christy Ezim Mbonu */ and Mr. Waleed Sadi. At its first meeting, on 7 August 1990, the Working Group elected Mr. Alfonso Martínez by acclamation as Chairman-Rapporteur.

PARTICIPATION

6. Other members/alternates who took an active part in the deliberations were: Mr. Chernichenko, Mr. Flinterman, Mr. Joinet, Ms. Ksentini, Ms. Warzazi and Mr. Yokota.
7. The following State attended the Working Group as Observer: Argentina.
8. The Office of the United Nations High Commissioner for Refugees was represented by an Observer.
9. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by Observers: Friends World Committee for Consultation and World Union for Progressive Judaism.

*/ Alternate.

DOCUMENTS

10. The Working Group had before it the following documents:

E/CN.4/Sub.2/1988/35 and Add.1/Corr.1	Final report prepared by Mr. C.L.C. Mubanga-Chipoya
E/CN.4/Sub.2/1989/44 and Add.1-7	Report of the Secretary-General containing comments by States and organizations on the draft declaration on the right to leave and to return
E/CN.4/Sub.2/1989/54	Working paper prepared by Mr. Ion Diaconu
E/CN.4/Sub.2/1989/NGO/4	Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)
E/CN.4/Sub.2/1989/NGO/10	Written statement by Human Rights Advocates, a non-governmental organization in consultative status (category II)
E/CN.4/Sub.2/1990/47	Report of the Secretary-General prepared pursuant to Sub-Commission resolution 1989/25

I. GENERAL DEBATE

11. Although a proposal was made by the Chairman to have a general debate on the subject, the Working Group decided to proceed otherwise, i.e. to start immediately the examination, article by article, of the draft declaration. Notwithstanding, in the course of the discussion it was indeed felt necessary to evaluate and debate the scope of the draft declaration.

12. Some participants maintained that the right to leave and the right to return and to enter should be considered separately, while others maintained that the two concepts are intertwined and cannot be separated. There was a general agreement, however, that the right to return and the right to enter are not identical but complementary. Many participants felt that whatever terms were used, they should be standardized throughout the entire declaration, and it was suggested to use terms in conformity with the Covenant of Civil and Political Rights.

13. The question arose whether issues extraneous to the mandate of the Special Rapporteur such as displaced populations within the boundaries of a State, forced expulsions of nationals or the right to remain in one's country, should be taken into consideration in the light of new developments. Participants, however, generally felt that these issues were beyond the current mandate of the Group but could be considered in the future.

II. DEBATE ON THE TITLE OF THE DECLARATION

14. One participant suggested that the words "freedom" and "non-discrimination" be dropped from the title of the draft declaration. Others felt, however, that this would compromise the tenet of the declaration as the non-discrimination clauses are of paramount importance. For instance, a later revised version of article 1 contained an amendment to change the words "without distinction" to "without any discrimination". It was subsequently decided to consider the draft article by article and then return to the title and preambular paragraphs.

III. DEBATE ON ARTICLE 1

15. During the discussion of article 1, the debate centred around the question whether any exception or derogation from the rights contained therein should be mentioned in the first article. There was general consensus that only the principle should be stated in article 1.

16. In this connection, for example, the words in brackets in the fourth and fifth line of article 1 (E/CN.4/Sub.2/1990/47, page 5) were deleted after discussion. At one point in the discussion, the Chairman-Rapporteur asked three participants to draft a consensus text on this article.

17. Some participants expressed the view that any reference to national legislation should be excluded from article 1, because the purpose of the declaration is to shape national law in conformity with international norms. Others expressed an opposite view.

IV. DEBATE ON ARTICLE 2

18. One member proposed to add the word "universal" between the words "effective" and "enjoyment" in article 2 (a) of the draft. He defended his proposal by saying that when one country allows a person to leave and the other country to which said person wishes to emigrate does not grant the corresponding entry visa, then, in practice, an effective enjoyment of the right to leave has come to naught. However, many other participants felt that although there should be no discrimination in a country's immigration policy, the word "universal" would impinge on the exercise of a State's sovereignty.

19. Another member proposed to insert the word "non-nationals" after the word "nationals" in paragraph 2 (c) of the draft, noting that to exclude non-nationals would be a grave derogation from the exercise of this right. Although he received some support, the majority felt that there was no contradiction between the wording of article 1 and that of article 2 (c). The distinction between nationals and non-nationals could be retained as long as discrimination did not occur within each group. One participant, in this connection, observed that the topic had already been covered in a study by a former member of the Sub-Commission.

V. CONSIDERATION OF THE DRAFTING OF ARTICLES

A. Article 1

20. One participant proposed to replace the words "[to enter]" in the second line with the words "[to return to]".

21. Another participant suggested that the word "distinction" in the second line be replaced with the word "discrimination", which was generally felt to better reflect the intent of the declaration.

22. The revised draft article 1, as prepared by three participants, contained a second sentence reading "this right shall be exercised under the conditions set out in this declaration". However, many participants expressed their misgivings about this addition and several amendments were proposed. Upon further consideration, there was consensus to delete the proposed second sentence.

23. Some discussion took place on the clause in brackets "except for minors not sui juris independently of their parents" (E/CN.4/Sub.2/1990/47, page 5) in the fourth and fifth lines of the article. Some participants agreed with the proposal of UNESCO to insert after "independently of their parents" the words "or not authorized by the latter". It was finally decided to delete the clause as being inappropriate in the first article.

24. As a result of the above discussion, the Working Group adopted the following text as article 1 of the Draft Declaration:

"Everyone has the right to leave any country, including one's own and to return to one's own country, without any discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, marriage, age or other status".

B. Article 2

Paragraph (a)

25. In the first line, the word "or" between the words "legislative" and "other measures" was replaced by "and".

26. A decision on the inclusion of the word "universal" in the second line between the words "effective" and "enjoyment", as proposed by a participant, was deferred and the word was left in brackets.

27. Pointing out that in his view the fact that denial of the exercise of this right can also be indirect, one participant proposed to add the words "... while at the same time refraining from any action which could serve to impede the effective enjoyment of these rights..." at the end of sub-paragraph (a). However, several members, in view of the importance of the issue, proposed to rephrase the sentence and insert it as a separate paragraph in article 2.

Paragraph (b)

28. Some participants suggested that the order of sub-paragraphs (b) and (c) be reversed because, logically speaking, the issuing of regulations precedes their publication.

Paragraph (c)

29. One participant proposed to put in brackets the words "law or" in the first sentence.

30. Another participant suggested that the words "this right" be replaced with "these rights" in the second sentence of the sub-paragraph.

31. One participant suggested that the word "nationals" in the second line be replaced by the word "residents" or "persons".

32. In view of the fact that too many issues remained unresolved, it was decided to leave the whole text of sub-paragraph 2 (c) in brackets.

33. One participant suggested that the following text be inserted as a separate article 2 bis:

["In order that this right may be exercised, every State shall adopt policies and measures to enable persons from other countries to enter its territory, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth, or marital or other status.

Every State shall also take all such legislative or other measures as may be necessary to guarantee to the persons entering its territory the enjoyment of all economic, social and cultural rights and, as appropriate, political and civil rights."]

It was decided to include this text in brackets, as above.

34. As a result of the above, the present wording of article 2 is as follows:

(a) Every State shall adopt such legislative and other measures as may be necessary to ensure the full and effective [universal] enjoyment of the rights set forth in this Declaration.

[... while at the same time refraining from any action which could serve to impede the effective enjoyment of these rights.].

(b) [All laws, administrative regulations or their provisions affecting the enjoyment of these rights shall be published and made easily accessible.].

(c) [The conditions prescribed by [[law or]] administrative regulations for the exercise of [[these rights]] shall be the same for all [[residents or persons]] of a country].

C. Article 3

35. One participant expressed the fact that he had difficulties with the word "recognize" in the first line, and suggested a word with more legal import. After being persuaded by other participants that the word was common usage in other human rights instruments, he retracted his suggestion.

36. Another participant suggested that the words "temporarily or permanently" be deleted at the end of the article. Although he received some support for his proposal, it was decided to retain the original wording since the distinction is valid.

37. One participant proposed that the word "enforce" be replaced with "observe" in the first line. Another agreed with this amendment and, in

addition, suggested that after the word "observe" the phrase "and do everything in its power to facilitate the exercise of ..." be inserted before "the right of any person to leave its territory...".

38. Another participant suggested that the wording of the previous proposal be altered to read "endeavour to facilitate".

39. Another participant proposed to add the words "at any time" at the end of the article. After some discussion, it was decided to leave this amendment in brackets.

40. As a result of the above discussion, the present wording of article 3 is as follows:

"Every State shall recognize, implement and observe and [do everything in its power to facilitate the exercise of], [endeavour to facilitate] the right of any person to leave its territory [at any time]."

41. One participant suggested that a future discussion be held as to whether or not the following text should be included as a new article 3 bis, or in another part of the draft declaration:

A State whose territory a person wants to leave should not be considered as hindering the exercise of the right to leave in case another State, whose territory this person intends to enter, refuses him entry.

D. Article 4

42. One participant suggested that article 4 be deleted altogether because, in his opinion, some countries are tempted to use their police powers to prevent "brain drain". Another participant then suggested that the article could be placed elsewhere in the draft declaration. After discussion, it was decided to continue consideration of this article next year in view of the importance of the "brain drain" issue.

VI. RECOMMENDATIONS

43. At the end of the third meeting, the Chairman-Rapporteur proposed to the Sub-Commission that it consider allocating more time for next year's deliberations of the Working Group. In addition, he suggested that informal consultations concerning the draft declaration be held prior to the next session of the Sub-Commission in order to accelerate the drafting of the declaration. Both recommendations were adopted without a vote.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/49
14 June 1990

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Item 6 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS,
INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF
APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL
AND OTHER DEPENDENT COUNTRIES AND TERRITORIES; REPORT OF THE
SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 14 May 1990 from the Chargé d'affaires of the
Permanent Mission of the Socialist People's Republic of
Albania to the United Nations Office at Geneva addressed
to the Under-Secretary-General for Human Rights

I have the honour to transmit herewith part of a report submitted on
behalf of the Council of Ministers by Comrade Manush Myftiu, Vice-Chairman of
the Council of Ministers, to the seventh session of the eleventh legislature
of the People's Assembly of the SPR of Albania on the improvement and
democratization of penal legislation and some organizational measures.

I would appreciate it if you would arrange for this report to be
circulated as an official document of the Sub-Commission on Prevention of
Discrimination and Protection of Minorities at its forty-second session and of
the Commission on Human Rights at its forty-seventh session.

(Signed) Alfred Papuçiu
Chargé d'affaires

THE IMPROVEMENT AND DEMOCRATIZATION OF PENAL LEGISLATION
AND SOME ORGANIZATIONAL MEASURES

1. Drawing upon on the experience gained over a number of years in the struggle to defend the socialist social order and the rights and freedoms of citizens, the Council of Ministers has prepared the draft law "On some amendments to the Penal Code" dealing with a number of problems.

The establishment of the institution of rehabilitation or of
the quashing of convictions

Our society is concerned that persons who, in the past have been convicted for the commission of a criminal offence, should be re-educated to enable them to become socially useful. The institution of rehabilitation is consistent with our lofty human principles, namely, that people are capable of mending their ways. In the final analysis, the criminal conviction is aimed at educating the offender. It is also the aim of the educational work undertaken by society vis-à-vis convicted persons.

2. Our country's experience shows that the educational role of society has been very effective and that the majority of persons who served their sentence gave proof of good conduct. They work and behave well in society. Social rehabilitation is thus put into practice. However, the Penal Code does not envisage legal rehabilitation for those who have committed offences.

3. In order to bring social rehabilitation into line with legal rehabilitation, provision has been made to introduce in the Penal Code the institution of legal rehabilitation and judicial rehabilitation. Legal rehabilitation means that the law itself annuls the punishment automatically when a convicted person has served a suspended sentence or a sentence involving confinement for up to five years, depending on the respective length of the period of detention, and has not committed a further offence. Judicial rehabilitation consists of the courts annulling the conviction, at the request of the State organ and the social organization.

4. This provision is applied in the case of persons sentenced to deprivation of liberty for a period exceeding five years and extending over the period of time that elapses after the sentence has been served if, in the course of this period, these persons have not committed a further offence and show by their behaviour their respect for the rules of society. The introduction of the institution of rehabilitation in the Penal Code, dictated by the democratic and human content of our socialist order, is an important measure aiming at the improvement and further democratization of our legislation which prescribes that persons who are rehabilitated will, from the legal and practical viewpoint, fully enjoy all the rights guaranteed by the Constitution and laws in force in the same way as all other citizens.

5. The draft law also envisages the introduction of the institution of prescription of legal proceedings and of the execution of sentences; this means the suppression or halting of proceedings for a criminal offence or the execution of the sentence when the legally prescribed times have elapsed, not only for petty offences, as is the case at present, but also for crimes.

6. The introduction of prescription means that it is accepted that a person who has committed a criminal offence is no longer a threat to society and it is unthinkable that he should be prosecuted and sentenced. It is a logical and humane solution.
7. The prescription is planned for periods ranging from 5 to 20 years depending on the level of social danger of the criminal offence. These periods may be doubled if the perpetrator of the criminal offence avoids prosecution, but in no case may they exceed 25 years. For crimes against the State, which incur the death penalty, there will be no prescription either as regards criminal prosecution or execution of the sentence.
8. Another aspect of the further improvement of our Penal Code is the introduction of the institution of release on parole.
9. To qualify for release on parole, the convicted person must give proof of good conduct, reflected in his work while serving his sentence. To be eligible for release on parole, he must have served not less than half of his sentence.
10. The Penal Code's provision of release on parole has become possible because the institutions in which convicted persons serve their sentences organize educational work to enable them to become useful members of society once again. This institution offers new scope for the further democratization of penal policy and the implementation of the line of the masses, because even social organizations, as well as the State organs, are entitled to propose this measure on behalf of a convicted person.

Reduction in the number of cases involving the death penalty

11. At present, the Penal Code envisages the death penalty in 34 situations. It has been applied exclusively for crimes posing a major threat to society.
12. The penalty has not been applied for many years for a large number of crimes expressly punishable by the death penalty. There are also 11 articles that prescribe the death penalty for crimes committed in wartime or under a state of emergency; they form an artificial adjunct to the Penal Code which, moreover, is applied in the normal situations of national life.
13. For this reason, the death penalty, as an extraordinary measure, will be limited and prescribed only for very serious crimes, such as betrayal of the homeland, espionage, acts of terrorism, sabotage, embezzlement of socialist property in specific circumstances, the plundering (extortion) of socialist and individual property and homicide. The death penalty is therefore abolished in 23 situations and remains in force in only 11 situations.
14. The proposal to rule out the death penalty not only for pregnant women, as is the current practice, but for any women, in any case and without any exception is very important; it is a further aspect of the socialist humanism that characterizes our order.
15. The draft law gives particular importance to refining the provisions on crimes against the State.

16. These crimes pose a serious threat to society. They include the criminal offences of defection and agitation and propaganda against the State. Since experience has so far shown that most of those who have tried to defect were immature persons, not often prompted by political and counter-revolutionary motives, provision has been made for defection, which continues to be a reprehensible act, to be no longer treated as betrayal of the homeland but rather as unlawful crossing of the frontier.

17. We hereby inform the People's Assembly that the Council of Ministers has prepared a draft law in the form of an amendment to the existing decree on issuance of passports stipulating that any Albanian citizen who applies for a passport for abroad will be entitled to receive one.

18. The Penal Code no longer describes as betrayal of the homeland the establishment of foreign or joint economic companies and institutions with monopolies and other States or the act of receiving credits from them, since it is not necessary for each prohibition prescribed by the Constitution to be sanctioned in the Penal Code. Also in the future, we shall not accept credits and sign various economic agreements containing political conditions that infringe our national sovereignty. If an employee of a State organ commits acts incompatible with the aforementioned provisions, he will be accountable on the grounds of misuse of authority. The abrogation from the Penal Code of this form of betrayal is therefore entirely justified.

19. The crime of agitation and propaganda is one of the crimes against the State for which amendments are proposed in the Penal Code. At the present time the Penal Code makes provision for punishment of fascist, anti-democratic, religious, bellicose and anti-socialist agitation and propaganda. The formulation of the crime of agitation and propaganda is very broad and offers scope for various subjective interpretations which in practice might have undesirable consequences because they might mean that persons might be described and condemned as enemies who are no such thing. Our Party and Government have always been at pains to ensure that citizens are defended against arbitrary interpretations and acts by any organ. Therefore, agitation and propaganda against the State are reformulated more clearly in the draft law.

20. The instrument considers as a crime only those acts of oral, written and other forms of agitation and propaganda aimed at overthrowing the social and State order established by the Constitution of the People's Socialist Republic of Albania, whereas fascist and bellicose agitation and propaganda continue to be a crime against the State and are dealt with in a special article.

21. With this new formulation, the new provision in the Penal Code concerning agitation and propaganda removes the danger of subjectivism and interpretations that might lead to the violation of the law and the democratic rights and freedoms of citizens enshrined in the Constitution, while at the same time it guarantees the protection of the State's interests.

22. By narrowing the definition of agitation and propaganda against the State, as we said earlier, the punishment prescribed for religious propaganda inter alia, is abolished. That is in conformity with practice, because thus far there has been no instance of criminal proceedings for such acts. In our

country the State is separate from religion and faith is a question of conscience for each individual. The abrogation from the Penal Code of the sanction for religious propaganda does not mean that we shall abandon atheist propaganda and educational work with the people. We hold the firm belief that these efforts will help to consolidate patriotism and national consciousness and that the interest of our nation and our homeland transcends any religious distinction. With their unique historical maxim "the Albanian's faith is the fact of being Albanian", our Renaissance forebears have bequeathed to us a heritage of enduring and very great value for our own time. Our Party and State will strive in the future to uphold our revolutionary patriotic traditions so that the question of the defence of freedom, independence, sovereignty and unity of the people will always transcend that of religion.

23. Deportation and expulsion as administrative measures were instituted in our country in specific historical circumstances and served to consolidate and protect our social order. However, in the present circumstances, with the development of our social and State order and the changes carried out in order to strengthen the rule of law and safeguard the interests of the citizens of our country, there is no justification for maintaining and applying the current decree on deportation and expulsion as administrative measures. A further reason for repealing this decree is that, in contrast to our entire legislation, coercive measures by the State are not linked by the commission of a criminal offence to individual responsibility and personal guilt. Besides, this decree is also at odds with the ongoing amendments to our legislation and the extension of the legal defence in the investigatory stage and during court proceedings.

24. The repeal of this decree will not create a vacuum because deportation and expulsion are now regarded as criminal sanctions that will be handed down by the court for a specific offence. Apart from that, the draft law "on preventive measures against individuals who pose a threat to the security of society", has been submitted to the People's Assembly for consideration and approval; the draft bill does away with some of the measures formerly included in the law on deportation and expulsion as administrative measures.

25. Preventive measures are taken against individuals conducting activities which, although not constituting a criminal offence, are incompatible with good conduct and social morality, against people who tend to commit criminal acts, who live entirely or partly on unlawful income, who encourage prostitution, the corruption of children or gambling, who refuse to perform socially useful work or who are members of criminal groups and associations.

26. These measures may be taken against persons over the age of 18.

27. Preventive measures will be awarded only by a court, in regular and prompt proceedings, guaranteeing the accused person the right to a defence counsel and the right to lodge a complaint.

28. The ninth and tenth plenums of the Party's Central Committee also adopted decisions on the upgrading of judicial bodies and guarantees of the legal defence of citizens.

29. In order to strengthen socialist legality, as well as the assistance to and supervision of the courts of zones and districts, to bring about an improvement in the quality of legal activity and to carry out more skilled and systematic work on the continuing improvement of legislation, a draft law has been prepared on the establishment of the Ministry of Justice. It will enable the Council of Ministers to cope better with the problems of justice and a series of other issues related to legal relations in our country.

30. The draft law on the establishment of the Ministry of Justice has been drafted in a way that is entirely consistent with the provisions of the Constitution, confirming the independence of courts in hearing cases. The Ministry will monitor the organization and functioning of the courts and will guide and control the administration of justice, without intervening in judicial proceedings. It is expected that the Minister of Justice, in order to consolidate socialist legality and in the interest of citizens, will have the right of petition, with a view to defending the law, against decisions by district and zone courts which are already irrevocable; this right does not infringe the principle of the independence of the courts.

31. Apart from the aforementioned responsibilities, the Ministry of Justice will also monitor the organization and functioning of the bar association, offices of bailiffs and notaries. It will prepare draft codes, draft laws, etc. related to the organization and activities of courts, while at the same time giving its views on all draft legal instruments prepared by the Ministries and other central institutions before they are forwarded for consideration by the Council of Ministers.

32. The Ministry of Justice will also be responsible for co-ordinating work on the training of lawyers for various sectors, co-ordinating activities on publicizing laws, running the criminology and forensic medicine service, etc.

33. Thus far, the defence of the legal interests of citizens, the State and social organizations was assured, in accordance with the provisions in force, by the legal aid offices which in those cases prescribed by law, took on the defence of accused persons brought before the courts. However, the restoration of the bar association is an important measure which broadens the defence of the rights of citizens and helps to strengthen the rule of law. The bar association will render legal assistance to citizens, State organs and social organizations and will plead on behalf of their legitimate interests in court, in investigation proceedings and in arbitration and at the same time will influence the course of justice. The measures envisaged in the draft law will lead to the complete and effective implementation of article 102 of the Constitution which stipulates that a defendant shall enjoy the right to a defence, because now the citizen will be guaranteed professional defence in civil as well as criminal cases whenever he so requests. Moreover, this defence, is more comprehensive and for the first time encompasses the investigation procedure; this marks a new phase in the democratization of criminal procedure in our country.

34. Besides defending the legitimate rights and interests of the defendant and of parties to the investigation and legal procedure, the bar association will also offer all kinds of legal aid, participating in formulating indictments, applications for criminal proceedings, complaints against administrative bodies, etc.

35. The bar associations are expected to be organized as boards or associations of persons assembled on a voluntary basis. The intention is to establish for lawyers conditions such as will enable them to discharge their task properly, to be independent in their activities and to be objective.

36. In the context of simplifying the organs of justice, it is planned to abolish from the legal system the village, town and suburban courts which up to the present time have tried criminal cases and delivered verdicts, provided they were authorized to do so.

37. Their abolition is justified by the virtual ineffectiveness of their decisions in criminal, civil and administrative cases. According to the draft law which has been submitted, they will become organs of a social character, in the form of social courts, which will function at the level of the people's councils and will be elected by the people every three years in an open election. Their members will be social activists who have won the confidence of their fellow citizens. These courts will work closely with the social organizations and will make an important contribution to strengthening the unity of the people, by recourse to procedures for reconciling individuals who have lodged complaints about insults or physical attacks and those who have committed them, without handing down a sentence on conviction. It is planned that administrative offences shall be dealt with by special organs (the police, the body of inspectors, etc.).

38. The aforementioned amendments envisaged in the draft laws on the establishment of the Ministry of Justice, the bar association and the social courts make it necessary to amend and supplement, in due form, the codes of criminal and civil procedure, which are also subject to the approval of this assembly.



Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1990/50
21 August 1990

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND
SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH
PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT
COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION
UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 20 August 1990 from the Chargé d'affaires of the
Permanent Mission of the Socialist People's Republic of
Albania to the United Nations Office at Geneva addressed
to the Chairman of the Sub-Commission on Prevention of
Discrimination and Protection of Minorities

1. During the debate on item 6 of the agenda of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its forty-second session, negative references and allegations have been made with regard to my country by representatives of non-governmental organizations such as Amnesty International and others. I consider these references and allegations to be unfounded and false.

2. However, I cannot but make particular mention of the base slanders and monstrous lies cynically and arrogantly directed against the Socialist People's Republic of Albania and its leaders by the representative of the so-called International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities at the afternoon meeting on 17 August 1990. Such slanders and the uncivilized, provocative language used are reminiscent of the cold war era for which certain circles and individuals still seem to pine.

(Signed) Alfred Papuçiu
Chargé d'affaires



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/51
23 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 3

REVIEW OF THE WORK OF THE SUB-COMMISSION

Note presented by Mrs. Claire Palley on the secret ballot
in the Sub-Commission

1. Debate whether secret balloting was permissible started in 1983 at Mr. Ben Whittaker's initiative. He believed that, independent though Sub-Commission members are, they are exposed to pressures not only from their own Governments but also from other Governments who exercise pressures both at meetings and at the time of re-election of members. An opinion was then sought from United Nations Legal Counsel Dr. Fleischauer. His opinion of 16 February 1984 (annexed) narrowly construes the Rules of Procedure of the Functional Commissions of Economic and Social Council (hereinafter referred to as the Sub-Commission's rules). The United Nations Counsel concluded that if secret ballots were to be taken regularly, it was only proper that the Sub-Commission's rules be amended for this purpose.

2. In August 1988 I re-raised the issue of secret balloting. This had nothing to do with China (or any other State) as events in China were not then a major issue. I raised secret balloting because this would avoid any risk of politicising the voting behaviour of members since they would not, as a result of their voting practices and observed conduct, any longer be subject to pressures by various Governments. My purpose was to ensure the protection of members. The Sub-Commission then requested another legal opinion. As a result in July 1989 Mr. Fleischauer, asked again to advise, merely reiterated his earlier views. Repetition does not necessarily lend weight.

3. With the very greatest respect, the February 1984 United Nations Legal Counsel's opinion was and remains wrong. Rule 59 reads:

"Except as provided in rule 66, the Commission shall normally vote by show of hands, except that a representative may request a roll-call ..."

4. When analysed, the Rule says:

(a) Except in the case of elections which require secret ballot (rule 66);

(b) The Commission shall normally vote by show of hands;

(c) Except that a representative may request a roll-call vote.

5. Why is the word "normally" (normalement) inserted? It must have some purpose or meaning, otherwise its insertion would have been unnecessary and otiose. In the Sub-Commission's rules only three rules (37, 52 and 59) contain the word "normally". In each rule it is there to permit an exception or exceptions, e.g., to permit reports to exceed 32 pages (rule 37) to present proposals and amendments not to be submitted in writing to the Secretary-General (rule 52); and to permit voting otherwise than by show of hands (rule 59).

6. If the relevant rule is mandatory and without any exception, there is use of the word "shall" and there is certainly no addition of the word "normally". Again, if there is to be an exception and only one, the usual mode of providing this is to make a mandatory statement and to add a phrase prefaced by "unless ..." or to say "except ...". Accordingly, where "normally" is inserted, it has a purpose over and above referring to the two already expressed exceptions viz., for elections and for roll-call votes.

7. The United Nations Counsel denies that "normally" has any meaning. He says:

"The word 'normally' is not meant to permit exceptions, but merely takes account of the exception for roll-calls already provided for in the rule."

8. In fact, there are two exceptions provided for viz., one for elections and one for roll-calls. This inaccurate reflection of the actual contents of the rule supports my view that the United Nations Counsel was looking at General Assembly rule 87, which, indeed, contains only one exception viz., for roll-calls.

9. Inconsistently, the opinion then continues, stating that United Nations Counsel:

"have advised various organs bound by similar rules, such as Main Committees of the General Assembly that a secret ballot could only be taken if two conditions were met: the decision to take a secret ballot was reached by general agreement, and the question was akin to an election (e.g. the selection of a site among several proposals)."

10. This suggestion raises several large questions. First, whence are these two conditions derived? Second, how is it that initially it is said that there are no exceptions possible other than those specified, and then criteria for exceptions are enunciated? Third, what do these criteria mean? For example, what is "general agreement"? Is it consensus, a large majority, a mere majority etc.? Why is there a seizing on the concept of something akin to an election? Why not something akin to a method of voting - in view of the roll-call voting exception? Why is the choice between alternatives extended to building "sites" and not to major procedural alternatives i.e. secret as opposed to open balloting?

11. I submit that these inconsistencies in reasoning arise from the technique of the opinion. First rule 59 is sloppily quoted, with the opinion, although purporting to quote the text, merely reading as follows:

"That Rule calls for votes to be taken 'normally ... by show of hands' except if a roll-call is taken at the request of any representative."

12. In fact, the rule contains two express exceptions: it begins with a first express exception for elections, then contains the phrase "normally ..." and then gives the second express exception for roll-call votes.

13. The opinion then goes on to refer to General Assembly rule 87, alleging that it is substantially the same, as too is Economic and Social Council rule 67 (1). It must first be noted that rule 87 is significantly different from our rule 59. Rule 87 reads:

"The General Assembly shall normally vote by show of hands or by standing, but any representative may request a roll-call."

14. It should be noted that the rule 89 provides only for the roll-call exception. Its sentence structure does not give the word "normally" any additional meaning, apart from giving effect to the roll-call vote exception. General Assembly Rule 127 (dealing with General Assembly Main Committees) is identical

15. A significant point is that rules 89 and 127 both apply "normally" to voting by show of hands and by standing. This makes it clear that "normally" does not refer to "frequency" as two modes of voting are mentioned and there is no suggested quantification of their use.

16. Into both General Assembly rules "normally" has been inserted, so as to make it operatively clear that, except where a roll-call has been requested, voting will be either by show of hands or by standing.

17. What the United Nations Counsel has done is to read our rule 59 as if it were identical with General Assembly rule 87, which it is not. He has made a similar mistake in construing Economic and Social Council rule 61 (1). If his practice is erroneous, repetition does not make it right. Having transposed the meaning of General Assembly rule 87 (wrongly), Counsel then invented two uncertain conditions allowing exceptions in limited circumstances.

18. I submit that we should reflect all this reasoning and look, as experts, afresh at our rule 59. First, we should give "normally" a meaning in its context, looking at the rule both purposively and literally.

19. Next, what meaning does one suggest? It is not "frequency" or degree of repetitiveness of the form of voting by show of hands, as is clear from General Assembly rule 87. I suggest it means "in the ordinary course of events," i.e. not abnormally. It is relevant in situations in which the Sub-Commission has to deal with out-of-the-ordinary events, exceptional situations, or grave, weighty and sensitive matters. Such an interpretation is purposive, furthering the independence and freedom from pressure by observer Governments of members, who may face election campaigns organized by those against whom they voted.

20. I submit that it is open to the Sub-Commission, as experts, to interpret rule 59. I further submit that in non-normal circumstances i.e. non-normal cases, we have discretion to have secret balloting. In cases of voting on issues involving gross violations of human rights, whether under the 1503 or 1235 procedures, we should properly exercise that discretion. Surely consideration of such matters is "abnormal". Indeed, only long after establishment of the Sub-Commission did such matters come under its jurisdiction, and they form a small proportion of its overall jurisdiction.

21. If my submissions are correct, there is no need to involve rule 78 to suspend rule 59. If this is wrong, Economic and Social Council will tell the Sub-Commission so. I should, in passing, say that I regard another opinion given last year, viz., that rule 62 is implicitly also suspended if rule 59 is suspended, as equally fallacious. It will not be relevant any longer, if my interpretation of rule 59 is correct: rule 59 and rule 62 are and will remain independent of each other. If we exercise admitted discretion under rule 59, we can explain our conduct if we wish. But there is no compulsion to do so and we retain our freedom. This removes a major concern of some members that we will, by secret balloting, deny ourselves the right of explaining our voting.

22. I should perhaps add that the proposition that the Sub-Commission already has the power to hold a secret ballot under rule 59, is not inconsistent with the proposition that at some stage it may be appropriate to modify the text of the rules in such a way as to make the position absolutely clear and remove any possibility of doubt. However, that is a matter for the future. In my view it is already plain that the Sub-Commission currently has the power to hold a secret ballot and should act accordingly.

Annex I

Rules of procedure

1. General Assembly

Method of voting

Rule 87

(a) The General Assembly shall normally vote by show of hands or by standing, but any representative may request a roll-call. The roll-call shall be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the President. The name of each member shall be called in any roll-call, and one of its representatives shall reply "yes", "no" or "abstention". The result of the voting shall be inserted in the record in the English alphabetical order of the names of the members.

(b) When the General Assembly votes by mechanical means, a non-recorded vote shall replace a vote by show of hands or by standing and a recorded vote shall replace a roll-call vote. Any representative may request a recorded vote. In the case of a recorded vote, the General Assembly shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members; nevertheless, the result of the voting shall be inserted in the record in the same manner as that of a roll-call vote.

2. Economic and Social Council

Method of voting

Rule 61

1. Except as provided in rule 68, the Council shall normally vote by show of hands, except that a representative may request a roll-call, which shall then be taken in the English alphabetical order of the names of the members, beginning with the member whose name is drawn by lot by the President. The name of each member shall be called in all roll-calls, and its representative shall reply "yes", "no" or "abstention".

2. When the Council votes by mechanical means, a non-recorded vote shall replace a vote by show of hands and a recorded vote shall replace a roll-call. A representative may request a recorded vote. In the case of a recorded vote, the Council shall, unless a representative requests otherwise, dispense with the procedure of calling out the names of the members.

3. The vote of each member participating in a roll-call or a recorded vote shall be inserted in the record.

3. Functional Commissions

Method of voting

Rule 59

1. Except as provided in rule 66, the commission shall normally vote by show of hands, except that a representative may request a roll-call which shall be taken in the English alphabetical order of the names of the States represented on the commission, beginning with the State whose name is drawn by lot by the Chairman. The name of each member shall be called in all roll-calls, and its representative shall reply "yes", "no" or "abstention".

2. The vote of each member participating in any roll-call shall be inserted in the record.

Annex II

Letter of 16 February 1984 addressed to the
Assistant Secretary-General for Human Rights
from the Legal Counsel, C.A. Fleischauer

Sub-Commission on Prevention of Discrimination and Protection
of Minorities - Question of Secret Balloting

1. This is in response to your memorandum of 14 February on this subject.
2. The Sub-Commission is, pursuant to rule 24 of the rules of procedure of the Functional Commissions of the Economic and Social Council (E/5975/Rev.1) bound by the rules applicable to the Commission on Human Rights, i.e. by these same rules. The words "in so far as they are applicable" in the cited rule do not detract in any way from the analysis below, since there is no reason why any of the specific rules referred to should not be applicable to the Sub-Commission.
3. The method of voting in the Sub-Commission is thus that specified by rule 59. That rule calls for votes to be taken "normally ... by show of hands", except if a roll-call is taken on the request of any representative. This rule is substantially the same as that of most United Nations organs, in particular those of Economic and Social Council (rule 61 (1)) and of the General Assembly (rule 87), and those rules have consistently been interpreted as not permitting secret ballots except for elections. The word "normally" is not meant to permit exceptions, but merely takes account of the exception for roll-calls already provided for in the rule. Consequently, we have advised various organs bound by similar rules, such as Main Committees of the General Assembly, that a secret ballot could only be taken if two conditions were met: the decision to take a secret ballot was reached by general agreement; and the question was akin to an election (e.g. the selection of a site among several proposals).
4. An organ that has the explicit or implicit power (e.g. the plenary of the General Assembly) to suspend its rules, can do so for the purpose of holding a secret ballot; this the Sub-Commission can do by following rule 78. However, it is not good practice to suspend any rule as a matter of routine, and so if it is desired to take secret ballots with some regularity this should be allowed by some other mechanism; however, there should be no legal objection to doing so on an ad hoc basis, e.g. for the purpose of adopting a recommendation to the Commission and the Council on this subject.
5. The best method of allowing the Sub-Commission to take secret ballots on some questions is to so provide in its rules. This might be accomplished by having Economic and Social Council adopt an additional paragraph to rule 24 of the Functional Commission rules of procedure along the following lines:

"2. Notwithstanding paragraph 1 of rule 59, 1/ the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Human Rights Commission [may decide to] [shall, at the request of a member] 2/ take a secret ballot on any matter of substance [relating to ...] 3/ [Such a decision to proceed by secret ballot shall itself be taken by a secret ballot and require a two-thirds majority of the members present and voting.] 4/"

Notes

1/ By making the proposed new rule an exception from all of rule 59 (1), it is clear that if requests are made for a roll-call vote under that rule and for a secret ballot under proposed rule 24 (2), the latter would automatically have precedence.

2/ The first two brackets present alternative approaches. The first reflects the proposal in E/CN.4/Sub.2/1983/5. The second is formulated by analogy to the provision for taking votes by roll-call under rule 59 (1); naturally one could instead require a request by a specified number of members.

3/ This bracketed clause is to be added if it is desired to restrict the questions as to which secret ballots may be taken - for example to matters concerning confidential communications covered by A/RES/1503 (XLVIII). Incidentally, there appears to be no logical connection between confidential proceedings and secret ballots, and no contradiction between open proceedings and such ballots; the motives for closing proceedings have little to do with those for desiring a confidential franchise.

4/ Both the conditions stated in this bracket are optional, and thus either or both could be omitted. Both conditions would become irrelevant if the second alternative referred to in note 2/ is selected, for in that event no decision is required for a secret ballot to be taken.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/52
22 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session
Agenda item 16

CONTEMPORARY FORMS OF SLAVERY

Written statement submitted by the United Nations Children's Fund

Exploitation of child labour

1. As noted in the 1986 Executive Board policy statements on Children in Especially Difficult Circumstances, UNICEF is concerned about the increase of children in hazardous and exploitative working conditions. Many UNICEF country offices have begun to work with government agencies and non-governmental organizations to combat child labour, and to promote protected and creative work alternatives combined with education for those children who must work to help sustain themselves and their families. UNICEF is also working closely with the International Labour Organisation in policy research, development of training materials and raising public awareness through regional and global seminars on child labour.

2. However, despite the combined efforts of United Nations agencies, member Governments and numerous non-governmental organizations, one of the most abusive, exploitative and hazardous forms of child labour is becoming more widespread. Child prostitution now exists in nearly all countries, and in some countries is now one of the most common forms of employment among children and youth, especially for young girls. Several countries acknowledge that tens of thousands of children are exploited as prostitutes.

3. At a recent tri-country meeting on Tourism and Child Prostitution in Chiang Mai, Thailand, sponsored by the Ecumenical Coalition on Third World Tourism, it was noted that an increasing number of young boys as well as girls are being lured or coerced into prostitution to serve foreign tourists. Experiences in several countries, where local governments and non-governmental organizations have joined forces against foreign paedophiles, show some local success in suppressing sexual exploitation of children. However, the economic power and effective information systems among the internationally organized paedophile groups have enabled them to increase rapidly their activity in other neighbouring towns or countries.

4. The suppression of these internationally organized groups, preying on poor children in low-income countries, requires the co-operation of governmental and non-governmental organizations in both the "sending" and "receiving" countries. International organizations such as INTERPOL may need to facilitate the inter-country exchange of information and keep track of individuals and groups convicted of sexual abuse of children. In this regard, we welcome recent statements by INTERPOL that they will be giving higher priority to the suppression of internationally organized sexual exploitation of children and child pornography.

5. But sexual abuse and exploitation of children is not solely or even primarily a result of tourism and foreign influences. All countries need to improve systems of detecting and dealing with sexual abuse and exploitation of children, both to prevent it and to provide therapy for the children traumatized by it.

6. The permanent psychological trauma inflicted by sexual abuse of children, including child prostitution, is still the most widespread negative effect, but the exposure to sexually transmitted diseases has, with the development of AIDS, become an even more frightening consequence of child prostitution. Allowing the continuation of child prostitution is to sentence many of these children to a slow and agonizing death from AIDS.

7. UNICEF is prepared to work with others on both the suppression of internationally organized sexual exploitation of children in prostitution, and to improve systems for detection and treatment of sexually exploited children. General resources and staff for this area of work are limited, and, therefore, we urge donor countries and other international agencies to give this a higher priority as well. The non-governmental organizations have taken the lead in raising this issue, and it is now urgent that governments and intergovernmental organizations begin to respond more effectively.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/53
22 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS,
INCLUDING POLICIES OF RACIAL DISCRIMINATION AND OF APARTHEID,
IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER
DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION
UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Letter dated 21 August 1990 from the Chargé d'Affaires of the
Permanent Mission of the United States of America to the
United Nations Office at Geneva addressed to the Chairman of
the Sub-Commission

On behalf of my Government, I request that this statement by
Ambassador Valladares, the United States Ambassador to the United Nations
Human Rights Commission, be entered in the record as a Sub-Commission document.

(Signed) Mr. H. Clarke Rodgers
Chargé d'Affaires

STATEMENT BY AMBASSADOR ARMANDO VALLADARES ON
IRAQ HUMAN RIGHTS ABUSES

In 1948, the international community acknowledged the horror of the second world war, and the hope of redemption, by pledging to strive for a more humane and just world. The Universal Declaration of Human Rights has become the standard by which all nations of the world must be judged. Indeed, the Declaration's second preambular paragraph recalls the "barbarous acts" which rained down on a world showing "disregard and contempt for human rights."

The Iraqi Government shows this same contempt today by its invasion of Kuwait. This is part of a pattern which includes its past use of chemical weapons, both in the war with Iran and more recently, against its own Kurdish population, and its invasion of Kuwait. In the words of the Kuwaiti delegate to the Sub-Commission, this was a "surprise invasion of Iraq forces which we have never imagined or expected from a brother and a neighbour having with us the relations of blood, religion, history and common destiny."

As President Bush noted recently, "The American people are with us. Congress is with us. Our allies are with us. And the vast majority of the Arab people are with us." Many of us in the United Nations Human Rights Commission also had urged the Commission in March to act on serious allegations of human rights violations in that country.

There is ample evidence that the Government of Iraq has been brutal to its own people, showing callous disregard for their human rights. The Government has tortured and murdered its opponents. Freedoms of speech, press, assembly, and association do not exist. Victims of the régime disappear, are murdered or thrown in jail, forced to live without hope.

This contempt for the lives and rights of the Iraqi people has now been exported to the people of Kuwait. The Kuwaiti delegate reported the rape and plunder of his people - including the women of Kuwait. This suffering was doubled, he added, "because it comes from a brother and neighbour against a peaceful country which has always helped and supported this traitor brother in the time of his crisis and difficulties." Iraqi aggression against other sovereign nations contrary to the United Nations Charter must be resisted by the international community.

The member States of the United Nations have taken a firm stand against this tyrant. I urge the Sub-Commission to fulfil its commitment to the Universal Declaration of Human Rights by refusing to accept these "barbarous acts". It is time to make clear what we have learned in these past forty-years, the value of life lived in freedom.

In the words of President Bush, we are acting "to protect the freedom of nations. We are making good on long-standing assurances to protect and defend our friends, who have the courage to stand up to evil and are asking for our help We are striking a blow for the principle that might does not make right. Kuwait is small. But one conquered nation is one too many."



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/54
23 August 1990

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-second session
Agenda item 10 (a)

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM
OF DETENTION AND IMPRISONMENT

Letter dated 21 August 1990 from the Permanent Representative of
Cambodia to the United Nations Office at Geneva addressed to the
Chairman of the Sub-Commission

I have the honour to send you herewith a copy of a text which appeared in the August 1990 issue of the periodical "NCR (Non-Communist resistance) Bulletin" - Vol. 2, No. 3, under the heading: Political: MORE HORRIFIC STORIES FROM PHNOM PENH'S T-3 PRISONS.

I should be obliged if this text could be circulated as an official document of the forty-second session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, under agenda item 10 (a): The administration of justice and the human rights of detainees: Question of human rights of persons subjected to any form of detention and imprisonment. */

(Signed) NGO Hac Team
Ambassador
Permanent Representative

*/ This document is available in the Secretariat for consultation.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/55
23 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session

Agenda Item 6

Letter dated 22 August 1990 from the Permanent Mission of Lebanon
to the Chairman of the forty-second session of the Sub-Commission
on Prevention of Discrimination and Protection of Minorities

On instruction from my Government, and further to our previous communications and statements before the Sub-Commission concerning the Israeli inhuman and repressive practices in the occupied area of southern Lebanon, I have the honour to inform you that I received today an urgent message from my Government informing me that the Israeli occupying forces in southern Lebanon has recently liquidated the Lebanese National - Assaad Nimr Bezzy - a detainee in El-Khiam camp since September 1985, after having tortured him.

It is to be recalled that the Israeli authorities, in spite of the numerous resolutions and decisions taken by the Security Council and other organs including the Commission on Human Rights, has consistently prevented the International Committee of the Red Cross and other humanitarian organizations from visiting the detaining camp of El-Khiam, and obstructed them from looking into the situation of the detainees who numbered 400.

The Lebanese Government strongly condemns this barbaric act which is contrary to all norms of human rights, and addresses an urgent appeal to the members of the Sub-Commission to take all necessary steps within their mandate

to bring Israel to cease these inhuman practices and release immediately the detainees, to allow the International Committee of the Red Cross and other humanitarian organizations to undertake their human mission in the occupied area of southern Lebanon and to fulfil the Security Council resolution 425 of 19 March 1978 which calls upon Israel to withdraw its forces from all Lebanese territory.

I should be grateful if you could have this letter distributed as a document of the Sub-Commission.

(Signed) Dr. Hicham HAMDAN

Chargé d'Affaires a.i.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/56
27 August 1990

ENGLISH
Original: RUSSIAN

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session
Agenda item 6

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION
AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH
PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT
COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION
UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)**

Working paper submitted by Mr. Chernichenko

1. The question of improving methods of considering human rights violations in the Sub-Commission on Prevention of Discrimination and Protection of Minorities is becoming increasingly urgent. The number of Sub-Commission resolutions dealing with human rights violations in individual countries is growing. Their content is essentially the same as that of the corresponding resolutions adopted by the Commission on Human Rights, the Economic and Social Council and the General Assembly. The debates preceding their adoption in these organs are also very similar. It can, however, scarcely serve any useful purpose for the Sub-Commission to model itself on the work of its superior bodies. As an expert body, it has a specific character enabling it to follow a different course.

2. The Sub-Commission should not, of course, refrain from discussions, during which it obtains information on human rights violations in different countries from Governments and non-governmental organizations. The key issue is how such information should be dealt with. If the Sub-Commission responds to it in the same way as the Commission, the illusion will be created that the Sub-Commission is taking some action with respect to human rights violations, but in that event it would not in fact be fulfilling its expert function.

3. In addition to drawing up international standards relating to human rights, including standards and criteria for the assessment of human rights violations, the Sub-Commission could most successfully discharge its expert functions with regard to human rights violations by beginning to prepare annual reports on such violations for the Commission. Questions about what the structure of such reports should be and who should be directly responsible for their preparation, etc., are essentially of a technical nature and, though complicated, can be solved.

Obviously, each such report must in the first place specify the countries which, in the information received, have been mentioned as violating human rights, the nature of the violations and the international standards which have been infringed.

4. The exchange of views in the Sub-Commission about the possibility of preparing such reports (usually described as global reports on human rights violations) shows that all the problems connected with their preparation cannot be solved immediately. A gradual, stage-by-stage change in the Sub-Commission's working methods might therefore be proposed with a view to switching to the preparation of such reports.

5. As a first step, a start should be made on reducing the number of resolutions relating to individual countries. For example, it is pointless to adopt resolutions concerning countries the situation in which is being studied by a special rapporteur of the Commission. The main effort should be devoted to drafting a resolution on a particular topic, that would be of a general character and not mention countries, concentrating the Commission's attention on the most typical human rights violations which were the subject of discussion. Reference could also be made in such a resolution to the relevant summary records covering the discussion of human rights violations in the Sub-Commission. The countries mentioned in the course of the debate would, of course, be named in the summary records.

6. The next step might be to draft a report based on the information obtained during the Sub-Commission's session and the replies of Governments received before the opening of the Commission's session at which the report is to be considered. The report might contain extracts relating to human rights violations from the Sub-Commission's summary records. The report would thus be based solely on statements regarding human rights violations. After compiling the report, the Sub-Commission could confine itself to adopting a brief resolution transmitting the report to the Commission on Human Rights. The analysis and evaluation of its contents would be a matter for the Commission. This would make it possible to prevent politicization of the discussion in the Sub-Commission during the consideration of the report and the adoption of the resolution. Even at the present stage the Sub-Commission could refrain from adopting resolutions relating to individual countries (with the few exceptions listed in paragraph 3 of document E/CN.4/Sub.2/1989/55 of 22 August 1989). Material considered at closed meetings must not, of course, be included in the report.

7. Experience will show what further action should be taken. If time permits, the report could gradually be extended to an increasing number of countries and ultimately to all the countries of the world, using information other than that specifically considered at Sub-Commission meetings. If this proves possible, there would no longer be any need to follow the procedure laid down by Economic and Social Council resolution 1503 (XLVIII). The Sub-Commission could almost completely refrain from adopting resolutions relating to individual countries. The exceptions might relate only to assignments given by the Commission, such as the compilation of certain lists (for example, of corporations violating human rights), which call for expert knowledge and qualifications. It is unlikely that the Sub-Commission would be able to make any analysis or evaluation of the information on human rights violations which it considers. Any attempt to make such an evaluation would be too time-consuming and would immediately lead to a sharp politicization of the Sub-Commission's work. Either one or the other might hamper the compilation of the report.

8. The Sub-Commission should in future also refrain from the adoption of resolutions and decisions on so-called urgent situations and cases. The very fact of their urgency precludes an expert assessment of such situations or cases. Clearly, United Nations bodies dealing with human rights and operating on a sessional basis are, in general, unsuited for such a role. Special

machinery operating on a permanent basis needs to be set up for the speedy handling of urgent situations and cases in the human rights field and thought must be given to the criteria to guide it.

9. In transmitting a global report for analysis and evaluation by the Commission on Human Rights, the Sub-Commission would not thereby be abandoning any responsibility. A clear demarcation is needed between the Sub-Commission's expert functions and the Commission's functions as a body composed of States Members of the United Nations. The preparation by the Sub-Commission of a report for subsequent analysis and evaluation by its superior organ would signify the fulfilment of its share of responsibility in the consideration of human rights violations. If there should in future be major structural changes in the United Nations affecting the Sub-Commission, consideration could also be given to transferring analytical functions relating to information on human rights violations to it.

10. The Sub-Commission should make some recommendations to the Commission regarding methods for the examination of the global report. This report could serve as a basis for the Commission's discussion of human rights violations in all countries of the world (in alphabetical order or by regions), the elements of a selective approach to its work having been eliminated. Moreover, such discussion could, in future, take on a wider scope, go beyond the framework of an examination of human rights violations and take the form of a discussion of the human rights situation in general in all countries with a view to an exchange of experience in solving the relevant problems.

11. In the discussion of the global report in the Commission the question will inevitably arise of varying assessments of situations in different countries, of the adoption of resolutions, where necessary, of the appointment of special rapporteurs for individual countries, etc. A politicization of the Commission's work is virtually inevitable in this connection. But even on the assumption that a thoroughgoing depoliticization of the Commission's work would be difficult to achieve at the present stage, certain measures could be recommended with a view to such depoliticization.

12. The Commission could appoint a General Special Rapporteur and give him the task of verifying the information relating to all countries in the global report and putting forward his conclusions and proposals for the Commission's approval. The General Special Rapporteur would gradually replace the Commissions's special rapporteurs for individual countries. Since a single individual would not be in a position to handle such a volume of work, the

Commission might appoint a group of deputies or assistants on the basis of the principle of the geographical distribution of posts. In addition, a group assisting the General Special Rapporteur might be set up in the Centre for Human Rights.

13. The idea of a General Special Rapporteur is not a revival of the idea of a United Nations High Commissioner for Human Rights, whom it was proposed to make an autonomous organ of the United Nations; he would be an organ of the Commission on Human Rights, subordinate to the Commission and with more specific and restricted terms of reference.

14. The Commission on Human Rights could confine itself to a very short resolution taking note of the conclusions of the General Special Rapporteur and approving or rejecting his recommendations. This would do something to reduce the politicization of the Commission's work.

The General Special Rapporteur could also be given the task of taking speedy action on urgent situations and cases, subject to the late submission of a report on such situations and cases to the Commission at its next session.



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/1990/57
28 August 1990

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS,
INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND
OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE
TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES:
REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS
RESOLUTION 8 (XXIII)

Working paper submitted by Mr. van Boven

1. In paragraph 2 of resolution 8 (XXIII) of 16 March 1967, the Commission on Human Rights requested the Sub-Commission to prepare a report containing information on violations of human rights and fundamental freedoms from all available sources for the use of the Commission. Since 1967 the Sub-Commission has, in accordance with the said resolution of the Commission, during each of its sessions, given ample attention to the question of violation of human rights and fundamental freedoms. An increasing number of non-governmental organizations and government Observers has assisted the Sub-Commission in the fulfilment of this difficult task. During its fortieth, forty-first and current session the Sub-Commission has discussed various suggestions and proposals which have been made to enable the Sub-Commission to better discharge its responsibilities under agenda item 6, also taking into account the functions and duties of the Commission on Human Rights in the matter (see in particular E/CN.4/Sub.2/1990/14).

2. The present working paper is solely aimed at a possible restructuring of the plenary debate in the Sub-Commission under agenda item 6. At present, this debate does not seem to have any clear structure. Numerous non-governmental organizations, and to a lesser extent government Observers (either under Rule 45 or Rule 69 of the Rules of Procedure) participate in the deliberations together with the members of the Sub-Commission. It should be noted that violations of human rights and fundamental freedoms in specific countries also receive attention by non-governmental organizations under other items of the agenda of the Sub-Commission, sometimes without a direct and clear relation to the materials discussed under such agenda items.

3. In order to contribute to greater clarity and effectiveness of the plenary debate of the Sub-Commission under agenda item 6, the following guidelines are suggested as of possible significance:

(a) The debate under agenda item 6 starts on the first day of the second week of the annual session of the Sub-Commission; this date is indicated in the provisional agenda and will not be changed except under exceptional circumstances;

(b) NGOs are requested to register their desire to participate in the debate before Thursday, 6 p.m. of the first week of the annual session of the Sub-Commission;

(c) The secretariat publishes on Friday, 1 p.m. of the first week a list containing the names of the NGOs wishing to speak and the order in which they will be allowed to do so, starting on Monday, 10 a.m. of the second week;

(d) The Sub-Commission will start its deliberations under agenda item 6 on the Monday of the second week by first listening to the NGOs in the order indicated in the list referred to under (c);

(e) An NGO which is not present in the room when called upon to speak will be put at the end of the list of NGO speakers; if such an NGO is not present again, it will lose its right to speak under agenda item 6;

(f) After the list of NGO speakers has been exhausted, government Observers who wish to do so will be allowed to participate in the debate;

(g) Thereafter the plenary debate among the members of the Sub-Commission will take place; government Observers will be allowed to participate in the debate in order to exercise their right of reply or the equivalent thereof.

4. It is assumed that by thus restructuring the debate under agenda item 6, the members of the Sub-Commission can optimally avail themselves of information before they come to an assessment of such information. The proposal implies that references to violations of human rights in specific countries in the deliberations under other agenda items will and should be kept to a minimum and should have no purpose other than to serve as illustrations.

5. It is expected that a restructuring of the discussions as suggested above will contribute to avoiding repetitive statements and rights of reply. It may also help the Sub-Commission to deal with the other agenda items in a more business-like and efficient manner.
